

JUL 11 2005

July 7, 2005

To: Edie
Charter Review Commission
4444 Rice Street, Suite 235
Lihue, HI 96766

Re: Ethic Boards Recommendation of Kauai County Charter 11.04

From: Mike Ching 

I have been made aware of the Ethic's Board's recommendations to the Charter Review Commission. The Kauai Police Commission would like to reserve the right to comment on the proposal.

The Kauai Police Commission will discuss this matter on July 22, 2005 and forward its official position on that matter.

In the mean time, I believe the Charter Review Commission may find the enclosed helpful. The history of the development of the Police Commissions in the State of Hawaii can be found in the enclosed.

Thank you.

HONOLULU POLICE COMMISSION

History and Duties

The Honolulu Police Commission was established in 1932 by the Territorial Legislature of Hawaii. Prior to 1932, there was no police department and law enforcement was placed in the hands of a sheriff.

The Commission was created after a major incident in Hawaiian history. On September 12, 1931, Mrs. Talia Massie, wife of Lt. Thomas Massie, United States Navy, and daughter of a socially prominent Southern white family, was allegedly abducted by five local males and taken to a desolate locality where she was beaten and raped.

Subsequently, five local males were picked up in connection with the reported assault and battery following a traffic incident, named as the men responsible for the attack, and taken to trial. The trial ended in a hung jury and the men were released on bail, pending the setting of a new trial.

On January 8, 1932, Joseph Kahahawai, Hawaiian in race and one of the accused men, was lured into a car by two white males on the basis of a "warrant," later found to be spurious. He was taken to a house and was interrogated by those who had picked him up and two others. The quartet was later identified as Lt. Massie, two men under his command, and his mother-in-law.

Kahahawai was shot and killed, admittedly by Lt. Massie, during the course of the "interrogation" for the purpose of securing a confession for the rape. Three of the four individuals involved were later arrested by a police officer. Kahahawai's body was found in the trunk of a car along with a spent .32 cartridge and the fake warrant.

All four people involved were charged with Second Degree Murder and held for trial. Famed criminal attorney Clarence Darrow served as the defense attorney. The jury found the four individuals guilty of Manslaughter. The defendants were sentenced to 10 years; however, Territorial Governor Lawrence M. Judd commuted the sentence to one hour per defendant and the four left Honolulu without serving any prison time. The four remaining local males accused of the rape maintained their innocence. Their position was never proven wrong and they were never brought to a second trial.

The backlash of the Massie and Kahahawai cases was a serious problem and demands for change in the police organization came from various sources. Seth Richardson, Assistant United States Attorney, Department of Justice, Washington, D. C., came to the Islands in early 1932 and conducted an in-depth survey of conditions in Hawaii. Richardson's findings were favorable, except for

Honolulu Police Commission
History and Duties
Page 2

law enforcement. His report was a definite indictment of law enforcement in Hawaii. Political control of the police organization had to be eliminated if Hawaii was to regain its place in the sun.

Governor Judd called the Territorial Legislature into special session. On January 22, 1932, a bill was passed and signed into law by Governor Judd as Act 1, Special Session Laws of 1932, creating in and for the City and County of Honolulu a completely new police organizational structure.

In the same session, the legislature passed and signed into law a bill which created the Office of the Public Prosecutor and the Office of the City and County Attorney (presently known as the Department of the Corporation Counsel) and separated the responsibilities for criminal and civil matters. The public prosecutor was responsible for prosecuting criminal cases while the city and county attorney was responsible for all civil matters affecting the city. Appointments to the respective positions were to be made by the mayor, subject to confirmation by the board of supervisors (presently called the city council).

The Police Act established for the first time in the history of police operations in Hawaii a five-member Police Commission, empowered to enact rules and regulations for the conduct of the police department and its business in the City and County of Honolulu. It gave the Commission full authority to hire and fire the chief of police.

One of the most stringent provisions of the Act prohibited any police officer from actively participating in any political campaign in which he advocated the election or defeat of any candidate for public office, preserving only the right of each officer to vote for the candidate of his choice. The rationale for this provision was clear: get politics out of the police department and get police officers out of politics. This provision holds true to today and also applies to members and staff of the Police Commission. Violators of this provision are subject to summary dismissal.

The original Police Act stipulated that the first Commission was to be named by the governor, subject to confirmation by the Territorial Senate; that as the staggered terms of the membership expired, replacements were to be named by the mayor, subject to confirmation by the board of supervisors; and that the individual selected to be the chief of police was to have at least five years residency in the Territory. These provisions were later stricken by legislative action, leaving the selection of the Commission members to the governor, subject to confirmation by the Territorial Senate; and allowing the Commission to select

Honolulu Police Commission
History and Duties
Page 3

the chief of police, with or without the residency requirement. This action provided fodder for the political cannons of City and County officials and other politicians, the objection being that the principle of home rule was being violated.

But the law remained unchanged until 1959 when Hawaii became the 50th state in the Union, and adoption of a city charter returned control of the police organization to the mayor and the city council. The city charter authorized two additional police commissioners to the Commission board, which brought the membership to its present seven members.

While it may be argued that arbitrary powers were granted to both the Commission and the chief of police, it should be remembered that conditions attending the reorganization of the service dictated that stringent measures be adopted so that Honolulu might convince its people (not to mention people nationwide) that corrective action was being taken in an honest effort to install a police service free of political control or influence.

Prior to 1972, sworn officers of the Internal Affairs office of the Honolulu Police Department serviced the Commission. In 1972, the Commission was authorized to hire its own civilian staff. The existing staff consists of an executive officer, three civilian investigators, a secretary-reporter, two police reporters, and a senior clerk-typist.

The Honolulu Police Commission is an independent agency and does not report to any department or agency within the City and County of Honolulu government.

Complaints must be filed within 60 days from the date of the incident. Exceptions are made for excusable neglect, if new evidence is presented, or for any other valid reason. Ignorance of the existence of the Commission or its rules and regulations is not considered a valid excuse. If the 60-day deadline and the exceptions are not met, the complainant is referred to the Internal Affairs office of the Honolulu Police Department.

The Commission will meet complainants out of the Commission office in the event the complainant is incarcerated, infirm, aged, or for any other valid reason. This is known as the Outreach Program.

The Commission investigates alleged misconduct by all police employees, including officers, reserve officers, and civilian personnel. The Commission's complaint classifications are included in the Rules of the Honolulu Police Commission.

The Commission's investigations are administrative in purpose. The investigations are conducted by the Commission investigators and are to be completed within 60 days. This rule was enacted by the Commission under the authority granted by the Revised Charter of the City and Count of Honolulu allowing the Commission to enact any and all rules governing its operations.

Completed investigations are submitted to the Commissioners for their consideration. Their decisions are based on a preponderance of evidence standard of proof. All complaints sustained by the Commission are forwarded to the chief of police who then decides upon the disciplinary action to be taken. Although the chief of police is the final authority as to applying discipline, the police chief may override the Commission's decisions. Sustained verdicts are entered into the employee's personnel file.

Once a decision is rendered, there is no recourse for appeal, except through the courts. There is no public hearing of the charges, nor is oral testimony allowed. No information is made available to the complainant except the findings by the Commission. For investigative purposes, the accused police employee is only told who had lodged the complaint and what the allegations are.

The average case load for a year is 200 cases. There may be multiple complainants and officers named in a single case.

The Commission reports at its public meetings as to how many complaints were received, and the amount and type of allegations sustained, not sustained, exonerated, and unfounded. No names are released.

There is no conciliation procedure.

Requests for legal counsel from police officers are also reviewed by the Commission to determine whether the officers had acted within the scope of police authority. The Commission decides whether the officer may be afforded legal representation provided by the city. The officer may appeal a denial decision by requesting a contested case hearing, included in the Rules of the Honolulu Police Commission.

The minutes of the Commission's executive sessions in which the cases are discussed are confidential. The investigative reports are considered to be personal records and therefore are also confidential. By statute, the investigative reports may be made available to government agencies requiring the information for their functions; i.e., the Internal Affairs office, Department of the Prosecuting Attorney,

Honolulu Police Commission
History and Duties
Page 5

Department of the Corporation Counsel. Other parties must obtain a court-issued subpoena order for the reports. All confidential reports not generated by the Commission are removed from the files before they are disclosed.

All material relating to the complaint (i.e., investigative reports, file cards, photographs) are destroyed 30 months following the date of the incident. This time period takes into consideration the two-year statute of limitation for civil law suits and a six-month grace period for law suits filed at the end of the two years. The Department of the Corporation Counsel is notified of the cases to be destroyed in the event litigation is pending for a particular case.

The Commission is guided by the Rules of the Honolulu Police Commission, which is subject to statutory public hearing requirements and must be filed with the city clerk of the City and County of Honolulu and the Lieutenant Governor's Office. Copies of this document may be requested by the public. Also made public is an annual report which the Commission must submit in accordance with the city charter. Complaint procedures and other administrative guidelines are considered internal documents and are not available to the general public.

7-6-88 (rev. 9-93; 5-00; 12/02)